

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL
RECEIVED

FEB 12 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

95-172

In re Applications of)
RAINBOW BROADCASTING COMPANY)
For an extension of time)
to construct)
and)
For an Assignment of its)
construction permit for)
Station WRBW(TV), Orlando, Florida)

GC Docket No. 95-468
File No. BMPCT-910625KP
File No. BMPCT-910125KE
File No. BTCCT-911129KT

DOCKET FILE COPY ORIGINAL

TO: The Honorable Joseph Chackin
Administrative Law Judge

PETITION FOR ORDER REQUIRING THE UNWINDING OF THE ASSIGNMENT
OF THE CONSTRUCTION PERMIT OF STATION WRBW(TV)

1. Press Broadcasting Company, Inc. ("Press") hereby petitions the Presiding Judge to issue an order requiring the unwinding of the assignment of the construction permit of Station WRBW(TV) in order to assure that, pending the resolution of the issues designated in this proceeding, the current permittee is Rainbow Broadcasting Company ("RBC"), and not Rainbow Broadcasting, Limited ("RBL").

2. On February 6, 1995, RBL filed a "Petition for Reconsideration of Oral Ruling" in the above-captioned proceeding. As discussed in Press' Opposition (being filed simultaneously herewith) to that Petition, there is neither procedural nor substantive basis for RBL's Petition, and it should be dismissed or denied. However, RBL's Petition does bring into sharper focus a question which was raised, somewhat indirectly, during the Prehearing Conference. That question is: who is the permittee of Station WRBW(TV), RBC or RBL? As explained below, the only correct

No. of Copies rec'd
List ABCDE

0+6

answer must be that RBC is the permittee, and any transactions undertaken between RBC and RBL must be "unwound" at this point so that each of those parties is placed in the status quo ante.

3. First, it is clear from RBL's Petition that RBL believes that it, and not RBC, is the permittee of Station WRBW(TV). In the very first sentence of the pleading RBL identifies itself as "permittee of Station WRBW-TV", and at page 3 it states that the "only interest [of RBL's partners] is the continued authorization of RBL to operate Station WRBW" (emphasis added). It is inconceivable that this was a typographical error on RBL's part, as the distinction between RBC and RBL had been the subject of extensive discussion at the Prehearing Conference and, presumably as a result of that discussion, counsel for RBL had since submitted a separate Notice of Appearance for RBC. Thus, the statements made in RBL's Petition must be interpreted as indicating that RBL believes that it continues to be the permittee of Station WRBW(TV). ^{1/}

4. The trouble with that notion is that the application pursuant to which RBL proposed to acquire the permit has not been granted. The Communications Act of 1934, as amended, specifically prohibits the grant of any application as to which there are outstanding substantial and material questions of fact; rather, in such cases the Act mandates that a hearing be designated. 47 U.S.C. §309. Both the Court of Appeals and the Commission concluded that substantial and material questions of fact exist

^{1/} See also the transcript of the Prehearing Conference at, e.g., 11 (RBL counsel states that "Rainbow Broadcasting Limited is operating a television station").

with respect to the captioned applications, hence the instant hearing. Thus, it is clear that the RBC/RBL assignment application cannot have been granted, since such action would be contrary to the specific mandate of the Act. As a result, RBL cannot accurately claim to be the station's permittee.^{2/}

5. At the Prehearing Conference, counsel for RBL asserted that RBL was the permittee, but those assertions appeared to be based on counsel's further repeated claims that RBC was supposedly no longer in existence. See, e.g., Tr. 10-11. But we now know that RBC is apparently still in existence -- a notice of appearance has been submitted herein by RBC. That being the case, the Presiding Judge should require RBC and RBL to submit a detailed showing establishing that, in fact, the assignment of the permit from RBC to RBL has been completely "unwound", and that RBC is the permittee of the station.

6. That result would also be consistent with the Commission's language in the Hearing Designation Order herein. There, the Commission used the term "Rainbow" to refer specifically only to "Rainbow Broadcasting Company". See HDO, ¶1. By contrast, the Hearing Designation Order does not appear to recognize any present interest of RBL in the permit.

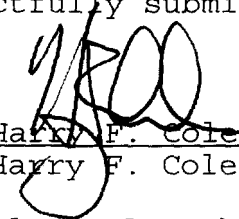
7. From all of the above, it is clear that RBC must be the permittee of Station WRBW(TV), and that any actions taken by RBC and RBL in connection with the assignment of the permit must be fully and completely undone. While Press recognizes that such

^{2/} The Presiding Judge seemed to concur with this during the Prehearing Conference. See Tr. 17 ("... in order to maintain the status quo, the assignment in effect has not taken place").

"unwinding" may not be particularly convenient or desirable to either RBC or RBL, the fact of the matter is that it was RBC and RBL who chose to close their transaction prior to finality. It is well-established that parties who take action on the basis of non-final agency decisions do so at their own risk, and may find themselves obligated to unwind such action. E.g., Teleprompter Corp., 50 Rad. Reg. 2d (P&F) 125, 127 (CATV Bur. 1981); Improvement Leasing Co., 73 F.C.C.2d 676, 684 (1979), aff'd, Washington Ass'n for Television and Children v. FCC, 665 F.2d 1264 (D.C. Cir. 1981). Having elected to take that risk, RBC and RBL cannot now claim that that election can and should force the Commission into allowing RBL to remain as permittee in violation of the Communications Act.

WHEREFORE, for the reasons stated, Press Broadcasting Company, Inc. requests that the Presiding Judge issue such orders as may be necessary to require the unwinding of the assignment of the construction permit of Station WRBW(TV), including (but not necessarily limited to) the submission, to the Presiding Judge and the parties, of detailed documentation describing all steps taken to accomplish such unwinding.

Respectfully submitted,


/s/ ~~Harry F. Cole~~
Harry F. Cole

Bechtel & Cole, Chartered
1901 L Street, N.W. - Suite 250
Washington, D.C. 20036
(202) 833-4190

Counsel for Press Broadcasting
Company, Inc.

February 12, 1996

CERTIFICATE OF SERVICE

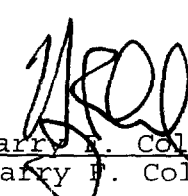
I, Harry F. Cole, hereby certify that on this 12th day of February, 1996, I have caused copies of the foregoing "Petition for Order Requiring the Unwinding of the Assignment of the Construction Permit of Station WRBW(TV)" to be hand delivered (as indicated below) or placed in the United States mail, first class postage prepaid, addressed to the following individuals:

The Honorable Joseph Chachkin
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W. - Room 226
Washington, D.C. 20554
(By Hand)

David Silberman, Esquire
Stewart A. Block, Esquire
Designated Trial Staff
Office of the General Counsel
Federal Communications Commission
1919 M Street, N.W. - Room 602
Washington, D.C. 20554
(By Hand)

Margot Polivy, Esquire
Katrina Renouf, Esquire
Renouf & Polivy
1532 Sixteenth Street, N.W.
Washington, D.C. 20036
Counsel for Rainbow Broadcasting, Limited

Bruce A. Eisen, Esquire
Kaye, Scholer, Fierman, Hays & Handler LLP
901 Fifteenth Street, N.W.
Suite 1100
Washington, D.C. 20005-2327
Counsel for Rainbow Broadcasting Company


/s/ Harry F. Cole
Harry F. Cole